



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 8, 1992

Mr. D. H. Hernandez
Assistant City Attorney
Office of the City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79999

OR92-156

Dear Mr. Hernandez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your requests were assigned ID#s 15298 and 15396.

You have received two requests for information relating to a claim filed against the City of El Paso (the "city") following a city police department "SWAT" team raid on February 15, 1992. The first requestor seeks "[a]ll available materials relating to claims by either the Graciano or Camacho families of 7859 Rosemary." The second requestor seeks:

1. Those portions of the Police Operations Manual of the City of El Paso relating to policies and procedures surrounding a Swat Team entry;
2. The name, addresses and work telephone numbers of each member of the Swat Team that participated in the entry described above;
3. Any photographs, reports or other tangible documents or materials generated as a result of this entry including but not limited to:
 - a. Photographs
 - b. Statements from any of the officers involved; and

- c. Internal investigation reports;
- d. Videos.

You advise that you have released the executed warrants and supporting affidavits, a portion of the police manual relating to SWAT team entry, and the address and work phone number for the officers of the El Paso Police Department. You claim that sections 3(a)(1), 3(a)(3), and 3(a)(17) of the Open Records Act except the remainder of the requested information from required public disclosure.

Previous open records decisions issued by this office resolve your request. Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). "Whether litigation is reasonably anticipated must be determined on a case-by-case basis." Open Records Decision No. 452 (1986) at 4.

The City of El Paso has received a notice of claim for damages arising out of the SWAT team raid of February 15, 1992, pursuant to the Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101. You have submitted the notice of claim for our review. On the basis of this notice of claim, we conclude that litigation reasonably may be anticipated. Having examined the documents submitted to us for review, we further conclude that the requested information relates to the anticipated litigation and that you may withhold the information from required public disclosure under section 3(a)(3) of the Open Records Act. Please note that this ruling applies only until this matter has been resolved and only to the documents at issue here. As we resolve this matter under section 3(a)(3), we need not address the applicability of sections 3(a)(1) and 3(a)(17) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-156.

Yours very truly,



Kym Oltrogge
Assistant Attorney General
Opinion Committee

KKO/GK/lmm

Ref.: ID# 15298

ID# 15396

ID# 15514

ID# 15582

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